



#8  
2-12  
PATENT  
ATTORNEY'S DOCKET NO.: D0188/7094C1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

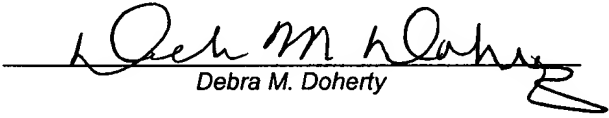
RECEIVED  
FEB 11 2004  
TECHNOLOGY CENTER R3700

APPLICANTS: Matthew Lawrence et al.  
SERIAL NO.: 09/900,128  
FILED: July 6, 2001  
FOR: SYSTEM FOR ASPIRATING AND IRRIGATING TRACT WOUNDS  
EXAMINER: Cris L. Rodriguez  
ART UNIT: 3763

CONFIRMATION NO.: 6507

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, P. O. Box 1450, Alexandria, VA 22313-1450 on February 4, 2004.

  
Debra M. Doherty

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO RESTRICTION REQUIREMENT**

Sir:

This is in response to the restriction requirement dated January 5, 2004. The restriction requirement is traversed. Applicants provisionally elect the claims of Group II (claims 4 and 5).

The claims of both Groups I and II are directed to tract wound irrigation, claims 1-3 being drawn to a tract wound irrigation tip and claims 4 and 5 being drawn to the method for irrigating a tract wound using such a tip. The claim limitations of the tip as defined in claim 1 are present in claim 4. Practicing the process of claim 4 requires the use of a tract wound irrigation tip as defined in claim 1. The basis for the restriction requirement appears to be the conclusion that the apparatus as claimed can be used to practice another and materially different process "such as irrigation of the esophageal duct, or a plant." That conclusory statement falls far short of satisfying the "...burden [that] is on the examiner to provide reasonable examples that recite material

differences." (MPEP §806.05(e)). The suggestion in the action that the claimed tract wound irrigation tip can be used to practice a materially different process, such as irrigation of a plant itself evidences the unreasonable examples offered in the action to support the restriction requirement. Indeed, the reasoning may as well have been based on the notion that the apparatus could be used in a process for maintaining the positions of papers (i.e., a paperweight). On that reasoning, virtually any claim to a product and to a process for using that product for its intended purpose would be subject to restriction. That is not what is intended by restriction practice. In view of the self-evident fact that each of claims 1 and 4 include identical limitations such that there is no material difference, the burden is on the examiner to document another materially different process or apparatus or withdraw the requirement. (MPEP §806.05(e)). No such documented evidence has been offered with this action. There is no evidence that the claimed tract wound irrigation tip is reasonably usable or has been used, or even proposed for use to water plants or irrigate the esophagus.

To the extent that the restriction requirement seeks justification on the theory that "...the search required for Group I is not required for Group II", that, too, is not the case. Where claim 4 includes all of the essential limitations of claim 1, it is not seen how one could perform a thorough search by searching only class 604, subclass 540 but not subclass 543.

Reconsideration is requested.

Respectfully submitted,



Arthur Z. Bookstein

Registration No. 22,958

KIRKPATRICK & LOCKHART, LLP

75 State Street

Boston, Massachusetts 02109-1808

Tel: 617-261-3100

Customer No.: 022832

Attorneys for Applicants